
From: Pete Kutras [\[mailto:pkutras@municipalresourcegroup.com\]](mailto:pkutras@municipalresourcegroup.com)
Sent: Thursday, October 28, 2010 11:01 PM
To: Isenberg, Phil@DeltaCouncil; Grindstaff, Joe@DeltaCouncil
Cc: Stevens, Chris@DeltaCouncil; Macaulay, Terry@DeltaCouncil
Subject: Delta Counties Information re BDCP Item 10 DSC meeting of October 28, 2010

Mr Isenberg and Mr Grindstaff

On behalf of the Delta Counties Coalition (Contra Costa, Yolo, Sacramento, Solano and San Joaquin Counties) please accept copies of two letters regarding the BDCP Purpose and Needs Statement. This is related to the discussion at the Council meeting of October 28, 2010 on Item 10, and the discussion of the draft scoping letter to DWR on BDCP. The Delta Counties Coalition sent a letter regarding the need to modify the BDCP Purpose and Needs Statement on September 10, 2010. We received a response on October 14, 2010.

We would ask that copies of these two letter be distributed to members of the Council, as well as to staff and the Arcadis consultant team. We would also ask that these be made a part of the record of the October meeting of the Delta Stewardship Council.

Thank you

Pete Kutras, Principal Consultant

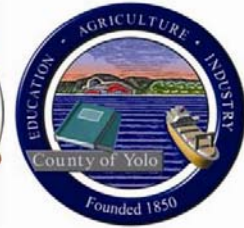
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Delta Counties Coalition

Contra Costa County · Sacramento County · San Joaquin County · Solano County · Yolo County

"Working together on water and Delta issues"

September 10, 2010

David Hayes
Deputy Secretary, Department of the Interior
U.S. Department of the Interior
1849 C Street, NW
Washington, DC 20240

Lester Snow
Secretary, Natural Resources Agency
State of California
1416 9th Street, 12th Floor
Sacramento, CA 95814

RE: Request to Revise the Bay Delta Conservation Plan (BDCP) Purpose and Need Statement

Dear Deputy Secretary Hayes and Secretary Snow:

As you know, the five counties encompassing the Sacramento-San Joaquin Delta (Contra Costa, Sacramento, Solano, San Joaquin, and Yolo) have formed a coalition to better represent our constituents in the various processes that may affect the Delta, including the Bay Delta Conservation Plan (BDCP). Our coalition was created to provide a vehicle for the five Delta counties to work in partnership with the state and federal governments on solutions in the Delta. We appreciate the efforts that have been made recently to better involve our coalition and other Delta interests in planning efforts, and hope that your agencies will further involve our Coalition.

We are writing today to ask you to revise the BDCP Purpose and Need statement. The current language, published in the Federal Register on February 13, 2009, is inconsistent with State law, the best available scientific information, and the interests of local governments and citizens in the Delta counties. The Purpose and Need statement should be revised now, as it is a foundational issue on which other analyses depend.

The Purpose and Need statement provides that a purpose of BDCP is to deliver "up to full contract amounts" to SWP and CVP contractors. However, the scientific evidence demonstrates that increasing water diversions from the Delta is a key stressor. This is reflected in the conclusions of the State Water Resources Control Board's final Delta Flow Criteria Report, which concluded that, "The best available science suggests that current flows are insufficient to protect public trust resources."¹ The U.S. EPA reached a similar conclusion in its earlier letter on the Purpose and Need Statement, and the Public Policy Institute of California has recently concluded that, "Given the extreme environmental degradation of this region, water users must be prepared to take less water from the Delta, at least until endangered fish populations recover."² DWR's analysis of the impacts of climate change also shows decreased diversions in the future.

Moreover, the Purpose and Need statement does not reflect the requirements of last year's Delta legislation (SB7X 1, aka: The Sacramento-San Joaquin Delta Reform Act of 2009). While our Coalition had significant concerns with the legislation and the process in which it was enacted, it is now the law of the State, and BDCP must comply with its

¹ State Water Resources Control Board, Development of Flow Criteria for the Sacramento-San Joaquin Delta Ecosystem, August 3, 2010, at p. 2.

² Public Policy Institute of California, "California Water: Planning for a Better Future," June 2010, available online at: <http://www.pplic.org/main/publication.asp?i=902>.

requirements. There are at least three ways in which the BDCP Purpose and Need Statement is inconsistent with the requirements of state law.

First, SB 7X 1 established a new state policy of reducing reliance on water exports from the Delta and investing in alternative, regional water supplies. Water Code § 85021. To our knowledge BDCP has focused exclusively on increasing water exports from the Delta, and has not acknowledged this legislative mandate to reduce Delta diversions and invest in regional supplies, let alone considered actions outside of the Delta that contribute to water supply reliability. The Purpose and Need statement should be revised so that so that the policy of reducing reliance on the Delta is incorporated and alternative water supplies are considered in meeting the water supply goals of BDCP.

Second, SB 7X1 established the well known coequal goals for the Delta:

Achieve the two coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.

Cal. Pub. Res. Code § 29702(a). However, the BDCP Purpose and Need statement wholly ignores the statutory requirement to achieve other goals in a manner that protects the interests of the communities and citizens that live in the Delta. Given the need for far more cooperation and engagement between Delta communities and BDCP stakeholders in order for the plan to be successful, at a minimum the Purpose and Need statement should be revised to be consistent with these requirements.

Third, with respect to the coequal goals and the requirement to reduce reliance on the Delta, we recognize that some interests are arguing that these legislative mandates paradoxically preclude reducing Delta diversions. This position is inconsistent with the legislation, which focused substantially on the potential risks to the existing conveyance system through earthquakes and levee failures, and this physical reliability of the system was a major motivation for the co-equal goals. Moreover, "a more reliable water supply for California" explicitly refers to investing in water recycling and other regional supplies (Water Code § 85004(b)). The BDCP Purpose and Need statement should be revised to focus on the physical reliability of the system, rather than the amount of water that is exported from the Delta.

The Delta County Coalition believes these changes to the Purpose and Need statement are very important to achieving a successful outcome in BDCP, and we look forward to working with you to help improve the BDCP process so that it can be successful.

Sincerely,



Mary Nejedly Piepho
Supervisor, Contra Costa County



Don Nottoli
Supervisor, Sacramento County



Larry Ruhstaller
Supervisor, San Joaquin County



Michael J. Reagan
Supervisor, Solano County



Mike McGowan
Supervisor, Yolo County



ARNOLD SCHWARZENEGGER, Governor
LESTER A. SNOW, Secretary for Natural Resources

October 14, 2010

Supervisor Mary Piepho
309 Diablo Rd.
Danville, CA 94526

Supervisor Michael Reagan
675 Texas St.
Fairfield, CA 94533

Supervisor Don Nottoli
700 H St., Suite 2450
Sacramento, CA 95814

Supervisor Mike McGowan
625 Court Street, Room 204
Woodland, CA 95695

Supervisor Larry Ruhstaller
222 East Weber Ave.
Courthouse, Room 701
Stockton, CA 95202

Dear Supervisors:

Thank you for your September 10 letter regarding a request for revision of the Bay Delta Conservation Plan (BDCP) Purpose and Need Statement published in the Federal Register in February of 2009. Rather than jump immediately to that point, I believe it is helpful to bring broader context to the discussion in order to best explain why the Purpose and Need Statement is appropriate within the greater scope of policy actions being taken by the state and by local water agencies.

Contrary to concern voiced by some the intent of the Bay Delta Conservation Planning Process is not to increase Delta exports. In fact, the focus of BDCP is two-fold: ecosystem restoration (including aspects of habitat, flows, and other stressors) and improvements to the reliability of exports in terms of regulatory stability, seismic risk, and adaptation to climate change. Three recent years of drought (2007-2009) demonstrated the extreme vulnerability of regions dependent upon water exports. The state expends significant effort to encourage the development of alternative supplies and an increased investment in water use efficiency for these areas and the entire state in a variety of ways that include the Integrated Regional Water Management Program. Yet, the fact remains that vast areas of the state, and a great deal of the state's economy remain reliant upon waters stored upstream of the Delta and conveyed through the estuary.

1416 Ninth Street, Suite 1311, Sacramento, CA 95814 Ph. 916.653.5656 Fax 916.653.8102 <http://resources.ca.gov>

Baldwin Hills Conservancy • California Coastal Commission • California Coastal Conservancy • California Conservation Corps • California Tahoe Conservancy • Central Valley Flood Protection Board
Coachella Valley Mountains Conservancy • Colorado River Board of California • Delta Protection Commission • Delta Stewardship Council • Department of Boating & Waterways • Department of Conservation
Department of Fish & Game • Department of Forestry & Fire Protection • Department of Parks & Recreation • Department of Resources Recycling and Recovery • Department of Water Resources
Energy Resources, Conservation & Development Commission • Native American Heritage Commission • Sacramento-San Joaquin Delta Conservancy • San Diego River Conservancy
San Francisco Bay Conservation & Development Commission • San Gabriel & Lower Los Angeles Rivers & Mountains Conservancy • San Joaquin River Conservancy
Santa Monica Mountains Conservancy • Sierra Nevada Conservancy • State Lands Commission • Wildlife Conservation Board



State Water Resources Control Board's 2010 Delta Flow Criteria Report

The State Water Resources Control Board's ("Board") Delta Flow Criteria Report provides a new perspective on the relationship of flow to certain Delta species. However, its Executive Summary provides critical bounds on its applicability in a regulatory setting. The Summary cautions that the outflow criteria were developed in response to a fairly narrow statute (Water Code §85086) and therefore the Board did not take its customary approach of balancing competing beneficial uses of water to setting in-stream flow recommendations. As a result, this report did not take into account impacts of Delta outflow recommendations on upstream species, such as salmon. Nor did the report consider other public trust resources impacted by their recommendations, including economics, power production, human health and welfare requirements, and the effects of flow measures on non-aquatic resources (such as habitat for terrestrial species). The Board's report contains clear cautionary language about the need for a more comprehensive review prior to any regulatory action. BDCP, which is required to work in a more comprehensive setting, will take the information from the Flow Criteria Report into account, as will the environmental review process for the BDCP.

Role of the BDCP in the Context of Statewide Water Supply Efforts and the Delta Plan

I would like to take the opportunity to clarify the often misunderstood role of the Bay Delta Conservation Plan as a Habitat Conservation Plan/Natural Communities Conservation Plan within the greater context of both ongoing and new efforts to protect California's water supply over the long term. It has come to my attention that some interpret SB 7X1's language regarding "reduce(d) reliance on the Delta" (§85021) without acknowledging that SB 7X1 also makes it state law and policy to "improve the water conveyance system" and to "restore the Delta ecosystem". What we have come to know as co-equal goals.

Often overlooked aspects of reduced reliance on the Delta include investment in improved regional water supplies, water conservation efforts, water recycling and a host of other water supply strategies pursued by local agencies and with the support of the California Department of Water Resources. These diversification strategies are essential to dealing with future climate risk and uncertainty, reducing the carbon footprint of water and sustaining California's economy. California's Integrated Regional Water Management (IRWM) Program, funded by remaining Proposition 50 monies and more recently, with Proposition 84 and 1E monies, is a collaborative effort to manage all aspects of water resources in a region. IRWM crosses jurisdictional, watershed, and political boundaries; involves multiple agencies, stakeholders, individuals, and groups; and attempts to address the issues and differing perspectives of all entities involved through mutually beneficial solutions. I believe that improving the water conveyance system, restoring the Delta ecosystem and reducing reliance on the Delta are all achievable goals, and that they are not contradictory.

While the BDCP will set out a comprehensive strategy to restore ecological functions and export water supply reliability in the Delta, it is but one component of a broader, and essential, effort to create a more sustainable Delta. This administration will continue to aggressively support the Delta Stewardship Council's efforts to develop a Delta Plan to guide state and local agencies in achieving the co-equal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem in a manner that safeguards the unique resources, culture, and values of the Delta as an evolving place. The final BDCP, if it meets certain criteria and is adopted by the Delta Stewardship Council, will become part of the broader Delta Plan.

October 14, 2010

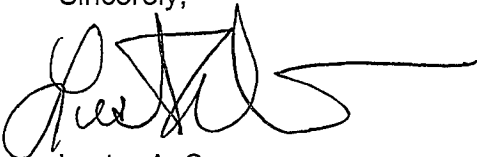
Purpose and Need Statement for the Bay Delta Conservation Plan

As your letter correctly identifies, one of the several project purposes outlined in the Purpose and Need Statement as part of National Environmental Policy Act (NEPA) environmental review is to deliver water "up to full contract amounts" under the BDCP. The second half of that same sentence continues "...*when hydrologic conditions result in the availability of sufficient water, consistent with the requirements of state and federal law and the terms and conditions of water delivery contracts held by State Water Project contractors and certain members of San Luis Delta Mendota Water Authority.*" These are essential caveats and provide context to the fragment highlighted in your letter.

Since its inception in 2006, a central tenet of the BDCP planning process has been to align water operations with the natural hydrology of the Delta. This paradigm shift is also embraced by the Public Policy Institute of California's report, *Envisioning Delta Futures*, and by the Delta Vision Blue Ribbon Task Force as essential to meeting the co-equal goals of water supply reliability and ecosystem restoration in the Delta. The BDCP has evaluated wide-ranging scenarios for water operations as one element of a proposed plan. All scenarios under consideration by BDCP describe operations that pump water from the Delta when there is a surplus of water in wet years to be stored in anticipation of dry and critically dry years when limited water supplies are prioritized and required to contribute to the recovery of the Delta ecosystem. Moreover, the concurrent EIR/EIS processes are evaluating a range of alternatives to the BDCP, which will include a variety of water export operations.

As with any modern large scale project, the BDCP and its environmental review processes are substantively complex and challenging. We know there are serious and ongoing concerns among the Delta Counties about the potential impacts of the BDCP upon the character of its communities and livelihoods of its residents, and that these concerns are only exacerbated by proposals in the abstract. We fully recognize the need to continue to engage the Delta Counties as the technical details of potential proposals develop, as these details are important to all Californians, especially Delta communities. I welcome your engagement and hope to continue our line of communication throughout the development and eventual implementation of the BDCP, within the greater context of the Delta Plan, local plans and other related efforts. I look forward to further discussion with representatives from all five Delta counties regarding the BDCP per my last letter of October 1, 2010. As always, please contact me at any time with questions or concerns: (916) 653-5656.

Sincerely,

A handwritten signature in black ink, appearing to read "Lester A. Snow", with a long horizontal flourish extending to the right.

Lester A. Snow

Secretary for Natural Resources

cc: David Hayes, Deputy Secretary, Department of Interior